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2-16-1977

## State of New York Public Employment Relations Board Decisions from February 16, 1977

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from February 16, 1977

### Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

### Comments

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-2/16-17/77

In the Matter of

THE TROY UNIFORMED FIREFIGHTERS ASSOCIATION,  
LOCAL 2304, IAFF,

Respondent,

-and-

CITY OF TROY,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-2451

The charge herein was filed by the City of Troy (City) on December 15, 1976. It alleges that the Troy Uniformed Firefighters Association, Local 2304, IAFF (Local 2304) violated CSL §209-a.2(b) by refusing to negotiate in good faith in that it improperly insisted upon the negotiation of demands that are not mandatory subjects of negotiation. Local 2304 responded that all the matters in question are mandatory subjects of negotiation but that, even if they are not, it is not improperly insisting upon their negotiation. The basis for this latter position is that Local 2304 is demanding nothing more than the continuation of current contract language with respect to matters alleged to be non-mandatory subjects of negotiation.

As the dispute herein chiefly involves scope of negotiations under the Taylor Law, it is being processed under §204.4 of our Rules; thus, the record has been transmitted to this Board along with the briefs of the parties without any hearing officer's decision or recommended order. That record indicates that this dispute has been submitted to factfinding and it is subject to arbitration under CSL §209.4.

4578

DISCUSSION

We reject Local 2304's posture that, where a party has been willing to include an agreement as to a non-mandatory subject of negotiation in a contract, it may be obliged to either continue that agreement into a subsequent contract or to negotiate over a demand covering that non-mandatory subject of negotiation. Parties may negotiate over non-mandatory subjects of negotiation and are encouraged to do so. However, in doing so they do not alter the character of a demand from non-mandatory to mandatory; neither do they obligate themselves to negotiate over such a matter in the future.<sup>1</sup>

During a pre-hearing conference, the disagreements between the parties were narrowed from those propounded by the pleadings. We now deal with the disagreements that survived that conference.

1. Prohibition of Use of Polygraph Test. Local 2304 had demanded the continuation of a clause in the prior agreement that:

"No member shall be ordered or asked to take a Polygraph (lie detector) test for any reason. Such test may be given if requested by the member."

In this form the demand is not a mandatory subject of negotiation. It is recognized that in Buffalo PBA v. Helsby (9 PERB §7020), the Supreme Court, Erie County held that "[a demand that] 'police officers shall not be required to

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<sup>1</sup> In Matter of Board of Education of the City of New York, 5 PERB ¶3054 (1972) we wrote (at p. 3095): "Agreements of the parties did not and could not enlarge the scope of mandatory negotiations...." To the same effect, the United States Supreme Court wrote, in Allied Chemical and Alkali Workers Local 1 v. Pittsburgh Plate Glass Co., Chemical Workers, 404 US 157, p. 187 (1971): "By once bargaining and agreeing on a permissive subject, the parties, naturally, do not make the subject a mandatory topic of future bargaining."

submit to polygraph tests during investigation of departmental misconduct is a mandatory subject of negotiations'." The reasoning of that Court would apply to the negotiability of a requirement that firefighters be ordered to take polygraph tests during investigation of departmental misconduct. But the demand herein goes further. It would prohibit the employer from ordering a firefighter to take a polygraph test for any reason. In this form, the demand encompasses matters beyond the employment relationship. To this extent it is beyond the scope of mandatory negotiations.

2. Prohibition of Use of Breathalyzer Test. Local 2304 had demanded the continuation of a clause in the prior agreement that:

"No member shall be ordered or asked to submit to a blood test, a Breathalyzer test, or any other test to determine the percentage of alcohol in the blood for any reason except as may be provided otherwise by specific statutory law. Such test may be given if requested by the member."

This demand, too, encompasses matters beyond the employment relationship, and to that extent it is beyond the scope of mandatory negotiations.

3. The Employer's Table of Organization. Local 2304's demand is:

"The City will provide the Association with a current table of organization which may not be changed except by mutual agreement. In the event that the City finds it necessary to change the present Table of Organization of the Bureau of Fire, the City shall notify the Association thereof in writing and the parties shall meet to negotiate the proposed changes."

The City does not object to negotiation of the demand that it provide Local 2304 with a current table of organization. Its objection is to the balance of the demand, which would preclude it from changing that table of organization except by agreement with Local 2304. The proposal to so restrict the City is not a mandatory subject of negotiations. In Matter of City of New Rochelle (4 PERB ¶13060) we determined that a public employer cannot be compelled to negotiate over the manner and means by which it chooses to render its service

to the public, and in Matter of Village of Scarsdale (8 PERB ¶13075) we declared that a demand that a municipality maintain a specific organizational structure is not a mandatory subject of negotiation. Such an agreement would interfere with the public employer's right to determine unilaterally what its manpower needs are, how it will deploy its staff, and consequently the means by which it will render service to its constituency.

4. Leaves of Absence for Association Business. Local 2304 had demanded the continuation of a clause in the prior agreement that:

"Association officers, representatives and delegates will be allowed all necessary released time with pay to participate in negotiations with the Employer, adjustment of grievances, arbitration hearings, and other functions relative to the operation of this agreement. They will also be given leave with pay to attend association and executive board meetings, and to participate in and attend conferences and conventions of affiliated associations and organizations. Five members shall be given time to attend conventions." (emphasis in original)

This is a mandatory subject of negotiation. In City of Albany v. Helsby, 48 App.Div. 2d 998 (1975), the Appellate Division confirmed a determination by this Board that a demand for paid time off for employees engaged in union activities is a mandatory subject of negotiation. It said (at p. 998):

"The topic of leaves of absence, with or without pay, for any purpose affects the hours of actual employment required for public employment. Such issues as the length of work year, vacations, sick leave and personal leave are accepted as being part of the terms and conditions of employment. They are a function of hours of work and, thus, a term of employment. Paid time off for union activities falls into the same category."

5. Restriction of Reassignment of On-duty Employees Forcing Call-in of Off-duty Employees.

Local 2304's demand is:

"Day to Day Assignment: Seniority in the next lower rank shall apply in filling vacancies on a day to day basis. An employee may not use his seniority for lateral or downgrade assignment. The Bureau may detail an employee from one duty post to another temporarily vacant position within the same firehouse. [Such detail shall not continue for more than four (4) consecutive tours of duty unless the employee voluntarily

agrees to continue to perform the duties for a longer period of time.] [If there is an insufficient number of firefighters in a firehouse to adequately man all of the equipment stationed in that house, the procedure for recall of off-duty firefighters as provided in Schedule C, Section 2 shall be applied.]"<sup>2</sup>

The brackets, which are in the original, set off the sentences that are in dispute. There is no disagreement regarding the negotiability of the material not found in brackets. So much of the demand as is contained within the first set of brackets is a non-mandatory subject of negotiation. It deals with the matter of deployment of personnel, and that is not a mandatory subject of negotiation (Matter of City of Newburgh, 10 PERB ¶13000). The demand contained in the second set of brackets is susceptible to interpretation that would make it a non-mandatory subject of negotiation. However, as clarified in the brief of Local 2304, it does not deal with the decision whether or not to recall firefighters. It only deals with the procedural matter of recalling employees on a rotating basis which can be accomplished in a manner that respects the right of the City to determine its manpower needs.<sup>3</sup>

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2 Section 2, Schedule C. provides:

"Such Firefighters and Officers shall be selected in the manner provided in Section 1 hereof on a rotating basis, to assure equal distribution of recall opportunities."

3 In explaining its demand, Local 2304's brief states:

"If the City decides to recall firefighters to man the equipment, it must follow the procedure set forth in Schedule C, Section 2, so as to equalize the benefits among all eligible employees. We do not say that the City must recall at any time. But if it does, it should treat all employees equally so far as possible." (emphasis in original)

The equal distribution of either the benefits or burdens of recall work is a mandatory subject of negotiation. (see Matter of City of White Plains, 5 PERB ¶13008 [1972]).

6. Removal of Equipment from Service for Alleged Reasons of Safety.

Local 2304 had demanded the continuation of a clause in the prior agreement that:

"The Safety Committee of the Association shall be free to inspect any equipment used in the field of fire work or other work of the Bureau, and advise the Chief of any faulty equipment found. Any firefighter who believes that a piece of equipment is unsafe and dangerous to life and limb, may request the Safety Committee to examine the same and if the Committee agrees, the equipment shall immediately be withdrawn from service until corrected or replaced."

"Safety Committee means a committee of members appointed by the President of the Association with the approval of the Executive Board whose duties will be to investigate the complaint of any member that equipment he is required to use is inadequate or unsafe, and to certify the condition of such equipment to the Association and the Chief of Fire." (emphasis supplied)

This is not a mandatory subject of negotiation. In Matter of City of Kingston, 9 PERB ¶13069 (1976), we determined a demand to be non-mandatory which, by implication, would have given an employee organization veto power over equipment selected by the City. The demand herein makes explicit the implication in the Kingston case regarding the absolute veto power of the employee organization. This is more than a general safety provision. It is a usurpation of the right of the City to determine the manner and means by which it will serve its constituency.

7. Financial Support for the Taking of Work Related Courses.

Local 2304's demand is:

"Optional courses: Any employee attending an optional education course related to the furtherance of his proficiency as a fire fighter, with approval of the City given in advance, shall if necessary be given released time with pay, and shall upon successful completion thereof and presentation of evidence of such successful completion be reimbursed by the City for the cost of the tuition and other expenses advanced by him in the taking of such course.



"...Candidates in number up to three times the number of positions available selected on a seniority basis from the candidates for such positions shall, if necessary, be reassigned for the duration of such course so that they participate in such course during duty time.

"Special Courses: Whenever a special course is announced by an educational institution which will result in the improvement of the professional capacity of a fire fighter, the City will arrange to permit as many of the personnel as are eligible to attend such a course, keeping in mind the criteria that if only a limited number can attend, seniority shall be the primary requirement for eligibility insofar as the City is concerned."

In Matter of Kingston, 9 PERB ¶13069, we held a similar demand to be a mandatory subject of negotiation, saying:

"Financial support for the taking of work-related courses is a mandatory subject of negotiation. This has been so determined by the New York State Court of Appeals in Board of Education v. Huntington, 38 NY 2d 122 (1972)."

8. Staffing -- Officers. Local 2304 has demanded the continuation of a clause in the prior agreement that:

"There shall be a Captain on duty in each firehouse on each shift. There shall be an officer assigned to each Company on each shift. A Captain may constitute an officer assigned to a Company."

Captains are in the negotiating unit and the purpose of the demand as explained in Local 2304's brief is "to provide job security for the Captains on staff".

This demand is not a mandatory subject of negotiation. A similar demand was considered by us in Matter of the City of White Plains, supra. We ruled there that the rank of supervisors to be assigned to a particular duty is a management prerogative. Moreover, this demand relates to manning and to the table of organization of the public employer. It is not a mandatory subject of negotiation for the reasons set forth in our discussion of demand No. 3, supra.

9. Staffing -- Rig Manning. Local 2304's demand is:

"...If there is an insufficient number of firefighters in a firehouse to adequately man all of the equipment stationed in that house, the procedure for recall of off-duty firefighters as provided in Schedule C, Section 2 shall be applied."

This demand parallels the last sentence in demand No. 5 and is, therefore, subject to the same interpretation and analysis. As so interpreted and analyzed, it is directed to the rotation of individual firefighters in a manner that respects the right of the City to determine its manpower needs. This is a mandatory subject of negotiation.

10. Benefits for Non-Bargaining Unit Employees. Local 2304's demand is:

"The City will at its own expense, provide similar health coverage for retired members of the Bureau of Fire and their families, and for the spouses and dependent children of deceased members."

This is not a mandatory subject of negotiation. The Taylor Law authorizes the organization of "public employees". That term means persons currently holding positions by appointment of employment in the service of a public employer (CSL §201.7(a)). Public employers are obligated to enter into agreements with respect to the terms and conditions of employment of such public employees (CSL §204.1). Its refusal to negotiate with duly recognized or certified representatives of its public employees is an improper practice (CSL §209-a.1(d)). There is no statutory duty to negotiate with respect to benefits for persons who are no longer public employees at the time of the negotiation. Moreover, an employee organization is recognized or certified to represent employees in a defined negotiating unit (CSL §207). It has no statutory right to represent any other person, be he a former employee or even a current employee who is not in the negotiating unit (CSL §208.1). This restriction as to the representation of retirees is applicable to employee organizations in the private sector under a decision by the U.S. Supreme Court in Allied Chemical and Alkali Workers.

Local 1 v. Pittsburgh Plate Glass Co., Chemical Division, 404 US 157 (1971).

11. Continuation Clause. Local 2304 has demanded the continuation of a clause in the prior agreement that:

"...If parties hereto have failed to agree upon a new contract on or before December 31, 1977, all of the terms and conditions set forth in this agreement, and any supplements or modification thereof shall continue in full force and effect until the date of execution of the new agreement."

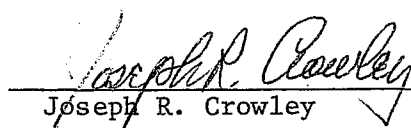
This demand, which relates to the interim extension of terms of an agreement past its expiration date, is a mandatory subject of negotiation, <sup>4</sup>Matter of Local 294 IBT, 10 PERB ¶3007 (1977).

NOW, THEREFORE, WE ORDER Local 2304 to negotiate with the City of Troy in good faith with respect to all those demands determined herein to be non-mandatory subjects of negotiation, <sup>5</sup>and with respect to all other matters, the charge herein is dismissed.

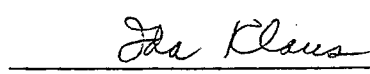
Dated: Albany, New York  
February 17, 1977



Robert D. Helsby, Chairman



Joseph R. Crowley



Ida Klaus

<sup>4</sup> If this dispute goes to arbitration, it will be subject to CSL §209.4(c)(vi) which provides that "in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement."

<sup>5</sup> Local 2304's duty to negotiate in good faith contemplates its withdrawal of such demands.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-2/16-17/77

In the Matter of  
COUNTY OF ROCKLAND,

Employer,

-and-

ROCKLAND COUNTY PROBATION AND INVESTIGATORS  
ASSOCIATION,

Petitioner,

-and-

NEW YORK STATE NURSES ASSOCIATION,

Petitioner,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Petitioner,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., ROCKLAND  
COUNTY,

Intervenor.

CASE NOS. C-1365  
C-1371  
C-1397

The matters herein were commenced by three petitions. The first, C-1365, was filed by the Rockland County Probation and Investigators Association (PIA) on May 7, 1976; it seeks the establishment of a unit of probation officers and investigators employed by Rockland County (County), and its certification as the representative of that unit. The second, C-1371, was filed by the New York State Nurses Association (NA) on June 1, 1976; it seeks the establishment of a unit of "all full-time and part-time registered professional nurses and persons authorized by law to practice as registered professional nurses" employed by the County and its certification as the representative of that unit. The units sought by PIA and NA are presently included in a unit established by the County when it recognized the Rockland County Chapter of the Civil Service Employees Association, Inc. (CSEA), more than eight years

ago. It consists of all County employees other than those in managerial/confidential status who are not in the unit of faculty personnel, the unit of deputy sheriffs and jailers, or the unit of blue-collar employees in the Highway Department. On behalf of the employees in its unit, CSEA has negotiated agreements covering the calendar years 1969-70, 1971, 1972, 1973-74 and 1975.

The third petition, C-1397, was filed by the Service Employees International Union, AFL-CIO (SEIU) on June 1, 1976; it seeks certification either in the existing unit or in what would remain of that unit if one or both of the other petitions were granted. The County and CSEA oppose any alteration of the existing unit, which contains approximately 1,800 employees.

The three petitions were consolidated and, after a hearing, a decision was rendered by the Director of Public Employment Practices and Representation (Director) dismissing the petitions of PIA and NA, and ordering an election between CSEA and SEIU in the existing unit. Both PIA and NA filed exceptions to this decision, and SEIU indicated its support of their exceptions.

In determining that the existing unit should be continued, the Director determined that it satisfied the statutory standards for establishing a negotiating unit set forth in CSL §207.1<sup>1</sup>. As there was no issue concerning the

1 CSL §207.1 reads:

"[The Board shall] 1. define the appropriate employer-employee negotiating unit taking into account the following standards:

- (a) the definition of the unit shall correspond to a community of interest among the employees to be included in the unit;
- (b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and
- (c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public."

second standard, he limited his consideration to the first standard and to the third, which has been interpreted to mean that a negotiating unit ought to be consistent with the administrative convenience of the public employer. In reaching the conclusion that the existing unit satisfied these two criteria, the Director relied upon our decision in Matter of the Town of Smithtown, 8 PERB ¶3015. In that case, the petitioner sought the decertification of the employee organization which had been recognized as the representative of a combined unit of white and blue-collar employees and its certification as representative of a separate unit of blue-collar employees. A majority of this Board noted that its normal predisposition would have been to establish separate units for the blue-collar and white-collar employees, but it declined to do so on the basis of its finding "that the evidence reveals a long-standing history of meaningful and effective negotiations for all Smithtown employees in the existing unit." It buttressed this conclusion by the additional finding that,

"blue collar employees constitute almost two-thirds of the negotiating unit. This diminishes the likelihood that their interests have been or will be sacrificed to those of white collar workers."

In their exceptions, PIA and NA seek to distinguish Smithtown on the ground that probation officers and nurses constitute a small percentage of the employees in the negotiating unit and, therefore, that their interests are likely to be sacrificed. Further, both argue that the record demonstrates that there already is a conflict between the interests of the employees each seeks to represent and those of the other employees in the unit which had deterred CSEA from providing them with adequate representation. Finally, they argue that the record does not indicate that the administrative convenience of the County would be better served by the continuation of the existing unit. To support this proposition, they argue that the County's only stated reason for advocating continuation of the existing unit was its judgment that it satisfied the requirement of community of interest.

Having reviewed the record and the arguments of the parties, we confirm the Director's findings of fact and conclusions of law. The record does not establish that the petitioners have not been accorded meaningful and effective representation within the existing unit.

We reach this conclusion only after giving particular attention to several points raised by PIA and NA. Both have argued that there is no issue of administrative convenience in the case because the County did not express any concern that the carving out of the proposed units would inconvenience its operations. We reject this argument. Even though the main thrust of the County's argument was directed to the standard that employees in the unit should share a community of interest, this was not the sole basis of its opposition to the PIA and NA petitions. In its brief to the Director, the County wrote:

"A determination in favor of separate nurses or probation officers units could logically extend to further fragmenting, since there is no more apparent justification for these two disciplines being separate than for any of the other disciplines employed by the county.

Concomitant [six] with increasing fragmentation with the additional expense in terms of money and time, there would be whipsawing in negotiations."

There was also County testimony that the establishment of separate negotiating units would hinder the effective operations of the Mental Health Department, where a substantial number of nurses work. The concern expressed was that the segregation of those particular employees in negotiating units on the basis of occupational discipline would increase the identification of the employees with their particular occupation to such an extent that it would diminish the effectiveness of its interdisciplinary team approach to the treatment of mental health and drug abuse problems. This is sufficient to raise the claim of administrative convenience.

In support of its position, PIA has attempted to persuade us that CSEA did not and could not provide probation officers and investigators with adequate representation because their interests are different from those of the other employees in the unit. An example upon which PIA relies was CSEA's alleged refusal to support probation officers in their attempt to achieve a salary grade reallocation. The record does not bear out this analysis. While CSEA opposed making the reallocation increase a part of the negotiations, this was simply a tactical position. Confident that the reallocation would, in any event, be achieved through administrative action, it did not want the cost to be charged against the general salary increase that it was seeking to negotiate because this would have meant having less money available in collective negotiations for all unit employees, including probation officers.

The record does not indicate that CSEA failed, in other ways, to provide adequate representation to probation officers and investigators. The probation officers and investigators were free to submit proposed demands to CSEA for presentation in the negotiations. The demands which they did submit reflect no unique concerns related to their special occupations. Moreover, they had access to, and made use of, the grievance procedures in which they were represented by CSEA.

The NA also argued that a conflict of interest between nurses and other employees in the existing unit precludes CSEA from providing fair and adequate representation to nurses. The evidence does not support this argument. Except for one year, the nurses did not propose to CSEA any demands reflecting concerns unique or special to them. Only in 1971 did the nurses present proposals reflecting such special concerns. There were three such proposals, all of which were advanced by CSEA and attained for the nurses through CSEA's negotiations.



We are concerned, however, by evidence that CSEA was not aware of the introduction and enactment of certain legislation affecting the terms and conditions of employment of nurses. CSEA's explanation that it looked after the general interests of all its constituents, but that it depended upon the nurses to call to its attention matters of special concern to them, is not entirely satisfactory. It is the responsibility of an employee organization to be aware of matters that may affect the terms and conditions of employment of its constituency, no matter how varied, and to be prepared to protect those interests. That responsibility requires that it should take the initiative in learning about legislation and that it call matters of special concern to the attention of the affected employees, rather than sitting passively by and leaving it to the employees to discover such developments for themselves. Yet, this circumstance standing alone does not persuade us that there is a conflict between the interests of nurses and the other employees in the existing negotiating unit that makes it inappropriate for nurses to be included with other employees. While we are mindful of a prevailing pattern of separate representation for <sup>2</sup> registered nurses based upon a history of separate collective bargaining, we find no compelling basis in this record for carving out, in this case, a separate <sup>3</sup> unit for nurses.

In its memorandum of law, NA refers to several prior decisions of this agency in which separate units were established for nurses. These decisions

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<sup>2</sup> See e.g., Mercy Hospitals of Sacramento, 217 NLRB No. 131, 89 LRRM 1087 (1975) where an "impressive history of exclusive representation and collective bargaining" was found to exist.

<sup>3</sup> Apart from the successful history of representation shown here, we were also impressed by the evidence showing a substantial diversity among nurses employed in three separate departments of Rockland County, thereby indicating that they are not, by themselves, such a homogeneous group as to require their separation. There would appear to be considerable differences in the terms and conditions of employment among nurses working in the Department of Health and Hospitals, the Department of Health, and the Department of Mental Hygiene.

were all issued by the Director upon his findings. They were not challenged and, accordingly, did not reach the Board.<sup>4</sup> Consequently, they do not compel a determination here that the existing unit be altered so as to establish a separate unit for nurses. On the basis of the record herein, it appears that the Director's reliance upon Smithtown is supported by the evidence and is correct. No good reason has been shown for not continuing the existing unit.

ACCORDINGLY, petitions in Cases C-1365 and C-1371 are dismissed, and

IT IS ORDERED that there be an election by secret ballot, to be held under the supervision of the Director of Public Employment Practices and Representation, among the employees in the unit below who were employed by the County on the payroll date immediately preceding the date of this decision.

Included: All employees exclusive of those specifically mentioned below.


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<sup>4</sup> There has been only one determination by the Board in a case concerning the initial unit designation for nurses and other professional employees of a single employer. That employer was the State of New York (Matter of State of New York, 1 PERB ¶399.85). There, requests for separate units were denied and all professional employees in diverse professions were found to have a sufficient community of interest to justify their being included in a single unit. Given the many different professions and other occupations found in State service and the potential for a myriad of units, that case may be distinguished from cases involving local government.

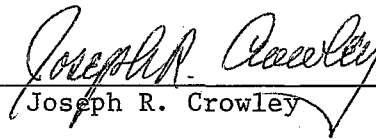
Excluded:

All employees in the unclassified service; all employees in the exempt class of the classified service; the officer or head of each department, office or agency who has the power to appoint, pursuant to law, any employee appointed as a deputy to such officer or head of department, office or agency and is paid as such, and the chief executive or director of each department, office or agency under the jurisdiction of a board or commission; deputy sheriffs and jailers; student employees; all executive, managerial, administrative, confidential, supervisory and professional employees.

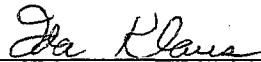
Dated: Albany, New York  
February 16, 1977



Robert D. Helsby, Chairman



Joseph R. Crowley



Ida Klaus

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-2/16-17/77

In the Matter of the : Case No. D-0137  
MINEOLA TEACHERS ASSOCIATION : BOARD DECISION  
AND ORDER  
upon the Charge of Violation of Section :  
210.1 of the Civil Service Law. :

On October 28, 1976, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Mineola Teachers Association, had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a 7 day strike against the Mineola Union Free School District on October 6, 7, 8, 12, 13, 14 and 15, 1976.

The Mineola Teachers Association filed an answer but thereafter agreed to withdraw it, thus admitting all of the allegations of the charge. The Mineola Teachers Association joined the Charging Party in recommending a penalty of loss of dues check-off privileges for 60% of its annual dues.<sup>1/</sup>

On the basis of the charge unanswered, we determine that the recommended penalty is a reasonable one.

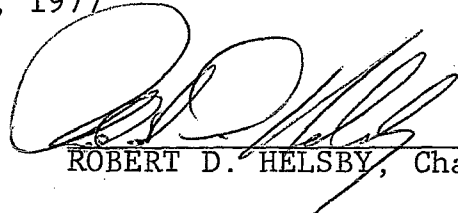
We find that the Mineola Teachers Association violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Mineola Teachers Association be suspended, commencing on the first practicable date, so that no further dues be deducted by the

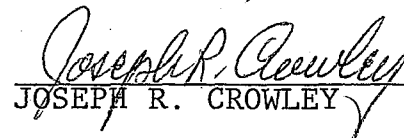
<sup>1/</sup> This is intended to be the equivalent of seven months suspension if dues were deducted in equal monthly installments throughout the year. In fact, the annual dues of the Mineola Teachers Association are not deducted in this manner.

Mineola Union Free School District on its behalf for a period of time during which 60 % of its annual dues would otherwise be deducted. Thereafter, no dues shall be deducted on its behalf by the Mineola Union Free School District until the Mineola Teachers Association affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

Dated: Albany, New York  
February 16 , 1977



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



IDA KLAUS

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2G-2/16-17/77  
MIDDLE COUNTRY SCHOOL DISTRICT #11; :  
Employer, :  
-and- :  
MIDDLE COUNTRY CUSTODIANS, GROUNDS- : Case No. C-1452  
KEEPERS & MAINTENANCE ASSOCIATION/ :  
NYSUT, :  
Petitioner, :  
-and- :  
SUFFOLK EDUCATIONAL CHAPTER CSEA, :  
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that SUFFOLK EDUCATIONAL CHAPTER, C.S.E.A., Inc. has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All custodians, groundskeepers and maintenance employees including matron, custodial, grounds-men, senior custodial worker, painter & glazier, mechanic (plumber, electrician, maintenance man carpenter, cement finisher, control man) store-keeper, store clerk, automotive operator.

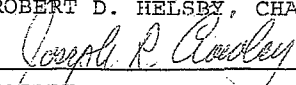
Excluded: All other employees.


Further, IT IS ORDERED that the above named public employer shall negotiate collectively with SUFFOLK EDUCATIONAL CHAPTER, C.S.E.A., INC.

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16 day of February, 1977.

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-2/16-17/77

In the Matter of :  
VILLAGE OF SARANAC LAKE, :  
Employer, :  
-and- :  
CIVIL SERVICE EMPLOYEES ASSOCIATION, : Case No. C-1415  
INC., :  
Petitioner, :  
-and- :  
GENERAL SERVICE EMPLOYEES UNION LOCAL :  
200 AFL-CIO, :  
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that GENERAL SERVICE EMPLOYEES UNION LOCAL 200 AFL-CIO

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All permanent employees of the Village of Saranac Lake.

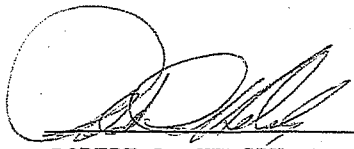
Excluded: Permanent supervisory employees in the position of Department Head and police officers.

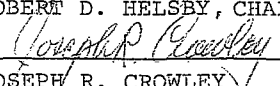
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with GENERAL SERVICE EMPLOYEES

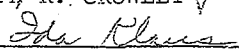
UNION LOCAL 200 AFL-CIO

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16 day of February , 19 77.

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-2/16-17/77

In the Matter of :  
JASPER CENTRAL SCHOOL DISTRICT, :  
Employer, :  
-and- :  
JASPER UNITED TEACHERS ASSOCIATION, : Case No. C-1437  
NYSUT/AFT, :  
Petitioner, :  
-and- :  
JASPER TEACHERS ASSOCIATION, NYEA-NEA, :  
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that JASPER TEACHERS ASSOCIATION, NYEA-NEA

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

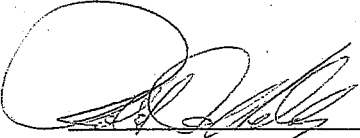
Unit: Included: All non-supervisory professional personnel for which certification is normally required by the State Education Department.

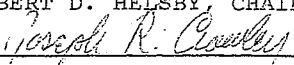
Excluded: Elementary co-ordinator and all others.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with JASPER TEACHERS ASSOCIATION, NYEA-NEA

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16. day of February , 19 77.

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-2/16-17/77

In the Matter of :  
VILLAGE OF DOLGEVILLE, :  
Employer, :  
-and- : Case No. C-1460  
CIVIL SERVICE EMPLOYEES ASSOCIATION, :  
INC., :  
Petitioner. :  
:

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

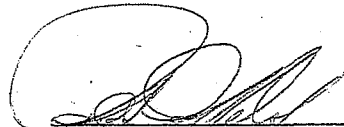
Unit: Included: All employees of the Village of Dolgeville.

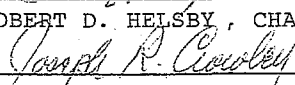
Excluded: Mayor, Village Engineer and all employees of the Police Department.

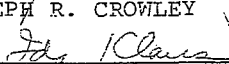
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16 day of February , 1977 .

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :

#2H-2/16-17/77

COUNTY OF ALBANY AND ALBANY COUNTY :  
SEWER DISTRICT, :

Joint Employer, :

-and- :

CASE NO. C-1441

I.B.T., LOCAL 294, :

PROCESS OPERATOR III

Petitioner. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that I.B.T., LOCAL 294

has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All Process Operators III.


Excluded: All other employees.

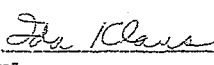
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with I.B.T., LOCAL 294

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16 day of February, 1977.

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA Klaus

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2I-2/16-17/77  
COUNTY OF ALBANY AND ALBANY COUNTY :  
SEWER DISTRICT, :  
Joint Employer, :  
-and- : Case No. C-1441  
I.B.T., LOCAL 294, : ALL ELIGIBLE EMPLOYEES  
Petitioner. : OTHER THAN PROCESS  
OPERATOR III

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that I.B.T., LOCAL 294

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

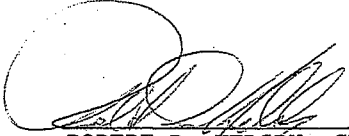
Unit: Included: All employees of the Albany County Sewer District.

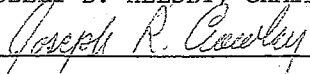
Excluded: Executive Director, Counsel, Superintendent of Operations, Chief Process Operator, Administrative Assistant, Administrative Aide, Process Control Engineer, Chief of Maintenance, Chief of Instrumentation, Clerk Steno I, Process Operator III.

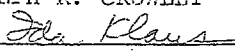
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with I.B.T., LOCAL 294

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 16 day of February , 1977 .

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS

STATEMENT CONCERNING BINDING ARBITRATION  
FOR OFFICERS OR MEMBERS OF ANY ORGANIZED  
FIRE DEPARTMENT OR POLICE FORCE OF ANY COUNTY,  
CITY, TOWN, VILLAGE OR FIRE DISTRICT (EXCEPT  
CITY OF NEW YORK.)

This statement comes in response to requests from Hon. Stephen R. Greco, Chairman of the Assembly Governmental Employees Committee, and from John F. Haggerty, Counsel to Majority Leader Warren M. Anderson. Copies are also being forwarded to the Governor's Office.

It represents the collective judgment of the New York State Public Employment Relations Board - Robert D. Helsby, Chairman, and Members Joseph R. Crowley and Ida Klaus. It is presented in the discharge of PERB's statutory duty to "conduct studies of problems involved in representation and negotiation...and to make recommendations...based upon the results of such studies."<sup>1</sup>

The 1974 Legislature amended the Taylor Law to provide for compulsory arbitration as the final step in the impasse procedure for members of organized police and fire departments outside of New York City.<sup>2</sup> These amendments, designed as a three-year experiment, expire on June 30, 1977. The 1977 Legislature must

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<sup>1</sup> CSL Sec. 205.5(g)

<sup>2</sup> Chapters 724 and 725, Laws of 1974.

experience in 133 instances of negotiations under the prior procedure was compared with 118 negotiations experiences in the first round under arbitration. Police and firefighter impasse experiences were compared, before and after the change in legislation, with the experiences of teachers in New York State, and with police and firefighters under alternative types of arbitration procedures in other states. Professor Kochan and his colleagues studied issues regarding the process and outcomes of bargaining at the level of the bargaining relationships by conducting interviews with union and management officials and neutrals who participated in each of the negotiations. The first 60 arbitration cases that were processed under the statute were analyzed factually and statistically. In addition, the chairman and partisan members of the arbitration panels were interviewed in the first 30 of these cases to evaluate the performance of the tripartite structure of the decision-making process. Questionnaires were sent to the parties in these cases to assess the overall acceptability of the procedure and the parties' satisfaction with it.

The detailed findings of the Kochan study are too complex to fully summarize. The two significant findings are confirmed by PERB research. The first is: in police and fire negotiations there was a high incidence of third-party intervention prior to the arbitration amendments which increased subsequent to their enactment. However, this increase was not out of line with the increase in PERB intervention with respect to other

basis of the factfinding report settled 19 percent; and arbitration was the final step in 28 percent of the impasses closed.

During 1976, there were 127 fire and police impasses, of which 111 were closed. Mediation settled 9 percent. Factfinders mediated successfully 22 percent of police and fire impasses; factfinding reports were accepted by both parties in 12 percent; additional negotiations based on the factfinding report settled 22 percent; and arbitration was the final step in 36 percent of the impasses closed.

A statistical breakdown of this two-year experience is as follows:

Kochan finds this experience to be essentially the same as that in other states which have various types of arbitration statutes for police and firefighters; Wisconsin and Michigan are particular examples.

A significant finding of the Kochan study appears to be more favorable: Negotiated increases both for policemen and firemen in 1975 were greater than increases obtained through arbitration awards. PERB data supports this conclusion for 1975 and for the first three quarters of 1976. In 1975, negotiated police settlements averaged 10.3 percent and arbitration awards averaged 8.7 percent. Negotiated increases for firemen averaged 8.1 percent and arbitration awards averaged 6.7 percent. During the first three quarters of 1976, negotiated police settlements averaged 7.4 percent and arbitration awards averaged 6.6 percent. For the same period, negotiated fire settlements averaged 8.1 percent and arbitration awards 7.8 percent. In these calculations, the awards have been weighted by the number of employees involved.

A major conclusion of the Kochan study is:<sup>5</sup>

"Because of the record [under the prior procedure], there is nothing in the evidence that would support a rationale for returning to the previous arrangement in which factfinding and the legislative hearing served as the terminal steps in the impasse procedures. On the contrary, there is some indirect evidence to suggest that serious pressures were building up within some of the largest bargaining relationships during the last years under the [former impasse procedure]. The fact that no serious work stoppages occurred

<sup>5</sup> Kochan, T.A., et. al., An Evaluation of Impasse procedures for Police and Firefighters in New York State: A Summary of Findings, Conclusions and Recommendations. Prepared for PERB Symposium on Police-Fire Arbitration in Albany, December 1976.

of the parties to reach agreement and the imposition of a settlement by a third party. The Kochan study shows, however, that bargaining may extend into the tripartite arbitration process and that negotiations may continue between the advocate members with the mediation of a neutral chairman. This continuation of the negotiating process would appear to be successful as indicated by the fact that 60 percent of arbitration awards are unanimous. Moreover, every effort is made by PERB within available resources to assist the parties to resolve their own disputes short of arbitration. It is the policy of the Board to decline to appoint an arbitrator and instead to remand the disputes to the parties where there has been a failure to negotiate in good faith and to exhaust the bargaining process. In two recent cases, the Board has remanded the dispute to the parties while providing further mediation service. Both cases were thereafter settled by agreement of the parties. In the first of these cases, PERB declared:<sup>7</sup>

"Interest arbitration is not, and was not, intended as an alternative to, or substitute for, good faith negotiations. Rather it is a procedure of last resort in police and fire department impasse situations when efforts of the parties themselves to reach agreement through true negotiations and conciliation procedures have actually been exhausted."

In the second case, PERB held:<sup>8</sup>

"The duty to negotiate in good faith contemplates each party communicating to the other the concessions that it is prepared to make. Often concessions by one party

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<sup>7</sup> Matter of Town of Haverstraw, 9 PERB 3063.

<sup>8</sup> Binghamton Fire Fighters v. City of Binghamton, 9 PERB 3072.



worked and whether, and in what form, they should be extended. The materials submitted and the transcript from the Symposium are available to those who may have an interest.

After careful study and evaluation, the Public Employment Relations Board unanimously comes to the following conclusions and recommendations:

1. The three-year experiment was really more limited than the passage of three years would imply. The first year was largely used in litigation of the constitutionality question and the cut-off date for the Kochan study was about a year before the experiment's scheduled expiration date of June 30, 1977. In addition, the time during which the experiment took place occurred in one of the most difficult periods of New York State financial history - a period when voluntary settlement was most difficult and any dispute resolution system would have been severely tested. This was not a good time for any kind of experiment with a new system.

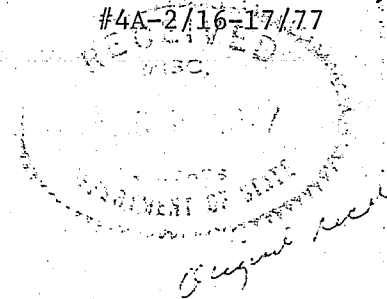
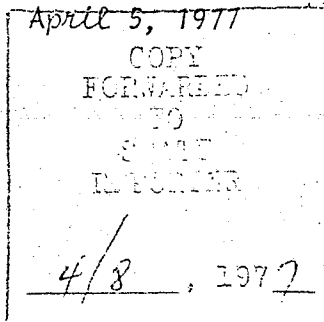
2. In spite of a few difficult situations and controversial awards:

- a. The system provided finality of resolution;
- b. The arbitration wage awards were, generally speaking, in line with negotiated agreements. In fact, the wage awards averaged about 1 1/2 percent less than the negotiated agreements;
- c. Although there were three minor instances of slowdown, there were no police or fire work stoppages;
- d. Judicial Court review, albeit limited, has been declared to be available.



NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
50 WOLF ROAD  
ALBANY, NEW YORK 12205

BOARD MEMBERS  
ROBERT D. HELSBY  
CHAIRMAN  
JOSEPH R. CROWLEY  
IDA KLAUS



Hon. Mario Cuomo  
Secretary of State  
162 Washington Avenue  
Albany, New York

Dear Mr. Cuomo:

I am transmitting herewith, for filing in your office, the original and three copies of amendments to the Rules of Procedure of the Public Employment Relations Board adopted on February 17, 1977. Prior notice of proposed agency action appeared in the State Bulletin on January 15, 1977.

These amendments are to become effective this date -- April 5, 1977 -- upon filing with your office, and promulgated by the Public Employment Relations Board on this date.

Sincerely,

Robert D. Helsby

STATE OF NEW YORK  
DEPARTMENT OF STATE

APR 3 1977

Attachments

Secretary of State

Copy of this letter ~~sent~~ returned to Robert D. Helsby  
at receipt E. Lindsay

Pursuant to and by virtue of the authority vested in the Public Employment Relations Board under Article 14 of the Civil Service Law, I, Robert D. Helsby, Chairman of the Public Employment Relations Board, acting on behalf of such Board, hereby amend NYCRR Title 4, Chapter VII, as follows. Any parts of the Rules of the Board not explicitly mentioned herein remain in effect as previously promulgated. These amendments shall take effect on April 5, 1977.

Section 200.10 is hereby amended as follows:

\$200.10 Filing; Service. (a) The term "filing", as used herein, shall mean [personal service upon] delivery to the Board or an agent thereof, or the act of mailing to the Board not less than two days before the due date of any filing.

(b) The term "service", as used herein, shall mean [personal service] delivery to or the act of mailing not less than two days before the due date.

Section 201.12 (d) is hereby amended as follows:

\$201.12(d) A request for an extension of time within which to file exceptions and briefs shall be in writing and filed with the Board at least three working days before the expiration of the required time for filing, provided that the Board may extend the time during which to request an extension of time because of extraordinary circumstances. A party requesting an extension of time shall notify all the parties to the proceeding of its request and shall indicate to the Board the position of each other party with regard to such request. [shall indicate the position of the other parties with regard to such request, and copies of such request shall simultaneously be served upon each party to the proceeding.]

Section 204.2 (a) is hereby amended as follows:

\$204.2 (a) Notice of hearing. After a charge is filed, the Director shall review the charge to determine whether the facts as alleged may constitute an improper practice as set forth in section 209-a of the Act. If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, [the charge] or that the alleged violation occurred more than four months prior to the filing of the charge, it shall be dismissed by the Director subject to review by the Board under section 204.10(c) of these Rules; otherwise, except where section 204.2(b) is applicable, a notice of hearing shall be prepared by the Director or a designated hearing officer, and, together with a copy of the charge, shall be delivered to the charging party and each named respondent. The notice of hearing shall fix the place of hearing at a time not less than fifteen working days from the issuance thereof.

Subparagraph (2) of paragraph (c) of subsection 204.3 is hereby amended to read as follows:

§204.3(c)(2) The answer shall include a specific, detailed statement of any affirmative defense including, but not limited to an allegation that the violation occurred more than four months prior to the filing of the charge.

Section 204.4 (a) is hereby amended as follows:

§204.4 (a) Immediately subsequent to the conference referred to in section 204.2(b), and if one of more of the parties have made a request that a dispute involving primarily a disagreement as to the scope of negotiations under the Act be processed expeditiously, or if the Director shall deem it appropriate to do so upon his own initiative, the Director shall so notify the Board and transmit the papers to the Board. The Board shall then inform the parties as to whether it will accord expedited treatment to the matter. If the Board determines that the matter will be expedited, it will also notify the respondent of the due date for its answer, and the parties of the due date for briefs. The Board may also direct that oral argument be held before it, or that a hearing be held before the full Board, or one of its members, or a hearing officer. If the Board determines that expedited treatment will not be accorded, the matter will be handled in accordance with subdivisions 2 (a), 3 and 5 through 15 of this section.

A new subparagraph is added to Section 204.7, to be subparagraph (1), to read as follows:

§204.7 (1) A motion may be made to dismiss a charge, or the hearing officer may do so at his own initiative on the ground that the alleged violation occurred more than four months prior to the filing of the charge, but only if the failure of timeliness was first revealed during the hearing. An objection to the timeliness of the charge, if not duly raised, shall be deemed waived.

Section 204.11 is hereby amended as follows:

§204.11 Cross-Exceptions. Within seven working days after [service] receipt of exceptions, any party may file an original and four copies of a response thereto, together with proof of service of copies of these documents upon each party to the proceeding.

Section 204.12 is hereby amended as follows:

§204.12 Request for Extension of Time. A request for an extension of time within which to file exceptions and briefs shall be in writing [,] and filed with the Board at least three working days before the expiration of the required time for filing, provided that the Board may extend the time during which to request an extension of time because of extraordinary circumstances. A party requesting an extension of time shall notify all the parties to the proceeding of its request and shall indicate to the Board the position of each other party with regard to such request. [shall indicate the position of the other parties with regard to such request. Copies of such request shall be served on each party to the proceeding and proof of service thereof shall be filed with the Board together with the request.]

Section 205.9 is hereby amended as follows:

§205.9 Determination and Award. The determination and award of the arbitration panel shall be in writing, signed and acknowledged by each member of the arbitration panel, and shall be delivered to the parties either personally or by registered or certified mail, return receipt requested. Within five working days of rendering the determination and award, the arbitration panel shall file two copies of the determination and award with the Director of Conciliation.

Section 206.4 is hereby amended as follows:

§206.4 Notice of Hearing. After receipt of a charge filed by the chief legal officer of a government involved or the Counsel, the Board shall issue to the parties a notice setting forth the time and place of the hearing, which time shall not be less than eight working days after the service of the notice.

Section 206.7 (a) is hereby amended as follows:

§206.7 (a) After completion of the hearing, or upon the consent of the parties, the hearing officer, if any, shall submit the case, including his report and recommendations, to the Board. The record shall include the charge, notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exceptions, documentary evidence and any briefs or other documents submitted by the parties. The Board shall cause the report and recommendations of the hearing officer, if any, to be delivered to all parties to the proceeding. Briefs may be filed by any party within seven working days after receipt of the report and recommendations of the hearing officer, if any; provided, however, that the Board may extend the time during which briefs may be filed because of extraordinary circumstances. An original and four copies of the briefs shall be filed with the Board.

Section 208.1 (f) is hereby amended as follows:

\$208.1 (f) Awards [to] of arbitrators filed with the Director of Conciliation under Parts 205 and 207 of these Rules.

The second note between subparagraphs (b) and (c) of Section 208.3 is hereby amended as follows:

Note: Since [the nature of] most of PERB's records [is such that they] are intended for the guidance of, and to be helpful to, various segments of the public, they are ordinarily available for inspection on the day that a request is received. However, if a request is made to inspect large numbers of records, PERB reserves the right to require reasonable advance notice of such request.

Section 208.3 (d) is hereby amended as follows:

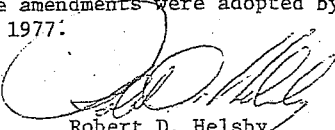
\$208.3 (d) Except as provided in subdivision (e) of this section, a fee of [ten] twenty-five cents per page will be charged for all copies made upon request by anyone other than a representative of a public employer or employee organization or a member of a Board panel, to whom one copy of a document may be given without charge. The Board will make every effort to comply with requests for such copies as expeditiously as possible.

Section 208.5 is hereby amended as follows:

\$208.5 Appeal (a) An appeal may be taken to the chairman of the Board within [thirty] twenty working days from:

- (1) denial of a request for access to records;
  - (2) a failure to provide access to records within five working days after receipt of a request.
- (b) The appeal shall be in writing and shall state:
- (1) the date of the appeal;
  - (2) the date and location of the request for records;
  - (3) the records to which the requester was denied access;
  - (4) whether the appeal is from denial of access or from failure to provide access. If from the former, a copy of the denial shall be attached to the appeal;
  - (5) the name and return address of the requester.

I hereby certify that these amendments were adopted by the Public Employment Relations Board on February 17, 1977:

  
Robert D. Helsby  
Chairman  
Public Employment Relations Board

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